

**CHAPTER 87A**  
**HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND**

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## **PART I. GENERAL PROVISIONS**

**§87A-1 Definitions.** As used in this chapter:

"Board" means the board of trustees of the Hawaii employer-union health benefits trust fund described in section 87A-5.

"Carrier" means a voluntary association, corporation, partnership, or organization engaged in providing, paying for, arranging for, or reimbursing the cost of, health benefits or long-term care benefits under group insurance contracts.

"Contribution" means money payments made to the fund by the State, the counties, an employee-beneficiary, or a qualified-beneficiary.

"County" means the counties of Hawaii, Honolulu, Kauai, and Maui, including their respective boards of water supply and other quasi-independent boards, commissions, and agencies.

"Dependent-beneficiary" means an employee-beneficiary's:

- (1) Spouse;
- (2) Unmarried child deemed eligible by the board, including a legally adopted child, stepchild, foster child, or recognized natural child who lives with the employee-beneficiary; and
- (3) Unmarried child regardless of age who is incapable of self-support because of a mental or physical incapacity, which existed prior to the unmarried child's reaching the age of nineteen years.

"Employee" means an employee or officer of the State, county, or legislature,

(1) Including:

- (A) An elective officer;
- (B) A per diem employee;
- (C) An officer or employee under an authorized leave of absence;
- (D) An employee of the Hawaii national guard although paid from federal funds;
- (E) A retired member of the employees' retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
- (F) A salaried and full-time member of a board, commission, or agency appointed by the governor or the mayor of a county; and

- (G) A person employed by contract for a period not exceeding one year, where the director of human resources development, personnel services, or civil service has certified that the service is essential or needed in the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures,
- (2) But excluding:
  - (A) A designated beneficiary of a retired member of the employees' retirement system; the county pension system; or the police, firefighters, or bandsmen pension system of the State or county;
  - (B) Except as allowed under paragraph (1)(G), a person employed temporarily on a fee or contract basis; and
  - (C) A part-time, temporary, and seasonal or casual employee.

"Employee-beneficiary" means:

- (1) An employee;
- (2) The beneficiary of an employee who is killed in the performance of the employee's duty;
- (3) An employee who retired prior to 1961;
- (4) The beneficiary of a retired member of the employees' retirement system; a county pension system; or a police, firefighters, or bandsmen pension system of the State or a county, upon the death of the retired member;
- (5) The surviving child of a deceased retired employee, if the child is unmarried and under the age of nineteen; or
- (6) The surviving spouse of a deceased retired employee, if the surviving spouse does not subsequently remarry; provided that the employee, the employee's beneficiary, or the beneficiary of the deceased retired employee is deemed eligible by the board to participate in a health benefits plan or long-term care benefits plan under this chapter.

"Fund" means the Hawaii employer-union health benefits trust fund established in section 87A-30.

"Health benefits plan" means:

- (1) A group insurance contract or service agreement that may include medical, hospital, surgical, prescribed drugs, vision, and dental services, in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of the services as determined by the board; or
- (2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

"Long-term care benefits plan" means:

- (1) A group insurance contract or service agreement in which a carrier agrees to provide, pay for, arrange for, or reimburse the cost of long-term care benefits as determined by the board; or
- (2) A similar schedule of benefits established by the board and provided through the fund on a self-insured basis.

"Part-time, temporary, and seasonal or casual employee" means a person employed for fewer than three months and whose employment is less than one-half of a full-time equivalent position.

"Periodic charge" means the periodic payment by the board to a carrier for any health benefits plan or long-term care benefits plan.

"Qualified-beneficiary" means, for purposes of the long-term care benefits plan, a former employee or an employee who is not eligible for benefits due to a reduction in work hours, including the spouse, divorced spouse, parents, grandparents, in-law parents, and in-law grandparents of an employee or retiree; provided that the beneficiary was enrolled in the plan before the employee or former employee became ineligible for benefits.

"State agency" includes the office of Hawaiian affairs.

"Trustee" means a trustee of the board of trustees of the Hawaii employer-union health benefits trust fund, as described in section 87A-5. [L 2001, c 88, pt of §1; am L 2003, c 152, §1]

## **PART II. BOARD OF TRUSTEES**

**§87A-5 Composition of board.** *[See explanatory note below.]* The board of trustees of the employer-union health benefits trust fund shall consist of ten trustees appointed by the governor in accordance with the following procedure:

- (1) Five trustees, one of whom shall represent retirees, to represent employee-beneficiaries and to be selected as follows:
  - (A) Three trustees shall be appointed from a list of two nominees per trustee selected by each of the three exclusive representative organizations that have the largest number of employee-beneficiaries;
  - (B) One trustee shall be appointed from a list of two nominees selected by mutual agreement of the remaining exclusive employee representative organizations; and
  - (C) One trustee representing retirees shall be appointed from a list of two nominees selected by mutual agreement of all eligible exclusive representatives; and
- (2) Five trustees to represent public employers.

Section 26-34 shall not apply to board member selection and terms. Notwithstanding any other provision of this section, no exclusive representative of a bargaining unit that sponsors or participates in a voluntary employee beneficiary association shall be eligible to select nominees or to be represented by a trustee on the board.

As used in this section, the term "exclusive representative" shall have the same meaning as in section 89-2. [L 2001, c 88, pt of §1; am L 2005, c 250, §1]

### **Explanatory Note**

L 2005, c 250 amendment. The legislature concluded that the governor's proclamation indicating the governor's intent to return H.B. No. 1548 was constitutionally defective and that said measure became law. On July 13, 2005, the legislature assigned Act 250 to H.B. No. 1548. The attorney general has taken the position that H.B. No. 1548 did not become law.

**§87A-6 Term of a trustee; vacancy.** *[See explanatory note below.]* The term of office of each trustee shall be four years; provided that a trustee may be reappointed for one additional consecutive four-year term.

A vacancy on the board shall be filled in the same manner as the trustee who vacated that position was nominated or appointed; provided that the criteria used for nominating or appointing the successor shall be the same criteria used for nominating or appointing the person's predecessor; provided further that vacancies on the board for each trustee position representing retirees and employee-beneficiaries appointed under section 87A-5(1)(A) and (B) shall be filled by appointment of the governor as follows:

- (1) If a vacancy occurs in one of the trustee positions described in section 87A-5(1)(A), then the vacancy shall be appointed from a list of two nominees submitted by the exclusive employee representative from among the three largest exclusive employee representatives that does not have a trustee among the three trustee positions;
- (2) If a vacancy occurs in a trustee position described in section 87A-5(1)(B), then the vacancy shall be appointed from a list of two nominees submitted by mutual agreement of the exclusive employee representatives described in section 87A-5(1)(B); and
- (3) If a vacancy occurs in the retiree position described in section 87A-5(1)(C), then the vacancy shall be appointed from a list of two nominees submitted by mutual agreement of all eligible exclusive employee representatives.

If by the end of a trustee's term the trustee is not reappointed or the trustee's successor is not appointed, the trustee shall serve until the trustee's successor is appointed. [L 2001, c 88, pt of §1; am L 2005, c 250, §2]

### **Explanatory Note**

L 2005, c 250 amendment. The legislature concluded that the governor's proclamation indicating the governor's intent to return H.B. No. 1548 was constitutionally defective and that said measure became law. On July 13, 2005, the legislature assigned Act 250 to H.B. No. 1548. The attorney general has taken the position that H.B. No. 1548 did not become law.

**[§87A-7] Chair, vice-chair, and secretary-treasurer.** The trustees shall elect from among the members a chair, a vice-chair, and a secretary-treasurer. [L 2001, c 88, pt of §1]

**[§87A-8] Compensation and expenses.** Each trustee shall serve without compensation, but the trustees may be reimbursed from the fund for any reasonable expenses incurred in carrying out the purposes of the fund. [L 2001, c 88, pt of §1]

**[§87A-9] Legal adviser.** The attorney general shall serve as legal adviser to the board and shall provide legal representation for the Hawaii employer-union health benefits trust fund. [L 2001, c 88, pt of §1]

**[§87A-10] Meetings; notice.** Meetings may be scheduled, and notice of meetings shall be provided as follows:

- (1) The chairperson may call a meeting of the board at any time by giving at least six calendar days' written notice of the time and place of the meeting to all trustees; and
- (2) A majority of the trustees may call a meeting of the board by giving at least ten calendar days' written notice of the time and place to all other trustees. [L 2001, c 88, pt of §1]

**[§87A-11] Quorum; board actions; voting.** (a) Six trustees, three of whom represent the public employer and three of whom represent employee-beneficiaries, shall constitute a quorum for the transaction of business.

(b) Trustees representing the public employers shall collectively have one vote. Trustees representing the employee-beneficiaries shall collectively have one vote.

For any vote of the trustees representing the public employers to be valid, three of these trustees must concur to cast such a vote. In the absence of such concurrence, the trustees representing the public employers shall be deemed to have abstained from voting.

For any vote of the trustees representing the employee-beneficiaries to be valid, three of these trustees must concur to cast such a vote. In the absence of such concurrence, the trustees representing the employee-beneficiaries shall be deemed to have abstained from voting.

An abstention shall not be counted as either a vote in favor or against a matter before the board.

(c) Any action taken by the board shall be by the concurrence of at least two votes. In the event of a tie vote on any motion, the motion shall fail. Upon the concurrence of six trustees, the board shall participate in dispute resolution. [L 2001, c 88, pt of §1]

**[§87A-12] Records and minutes.** The board shall keep records and minutes of all meetings of the board. [L 2001, c 88, pt of §1]

### **PART III. BOARD POWERS AND DUTIES**

**[§87A-15] Administration of the fund.** The board shall administer and carry out the purpose of the fund. Health and other benefit plans shall be provided at a cost affordable to both the public employers and the public employees. [L 2001, c 88, pt of §1]

**[§87A-16] Health benefits plan; carriers.** (a) The board shall establish the health benefits plan or plans, which shall be exempt from the minimum group requirements of chapter 431.

(b) The board may contract for health benefits plans or provide health benefits through a noninsured schedule of benefits. [L 2001, c 88, pt of §1]

**[§87A-17] Group life insurance benefits or group life insurance program.** The board may provide benefits under a group life insurance benefits program or group life insurance program to employees. [L 2001, c 88, pt of §1]

**§87A-18 Long-term care benefits plan; carrier or third-party administrator.** (a)

The board may establish a long-term care benefits plan or plans for employee-beneficiaries; the spouses, parents, grandparents, in-law parents, and in-law grandparents of employee-beneficiaries; and qualified-beneficiaries. The plan or plans shall be at no cost to employers and shall comply with article 10H of chapter 431.

(b) Notwithstanding any other law to the contrary, long-term care benefits shall be available only to:

- (1) Employee-beneficiaries and their spouses, parents, and grandparents;
- (2) Employee-beneficiary in-law parents and grandparents; and
- (3) Qualified-beneficiaries who enroll between the ages of twenty and eighty-five, who comply with the plan's age, enrollment, medical underwriting, and contribution requirements.

(c) The board may contract with a carrier to provide fully insured benefits or with a third-party administrator to administer self-insured benefits. [L 2001, c 88, pt of §1; am L 2004, c 216, §14]

**[§87A-19] Plans for part-time, temporary, and seasonal or casual employees.** (a)

The board may offer medical, hospital, or surgical benefits plans to part-time, temporary, and seasonal or casual employees at no cost to the employers. The board may determine eligibility for part-time, temporary, and seasonal or casual employees by rules exempt from chapter 91 as provided in section 87A-26.

(b) The board shall establish the medical, hospital, or surgical benefits plan or plans, which shall be exempt from the minimum group requirements of article 10A of chapter 431. The medical, hospital, or surgical benefits plan or plans shall provide, pay for, arrange for, or reimburse the cost of medical, hospital, or surgical services, and may include prescribed hospital in-patient and out-patient service and medical benefits.

(c) The board may contract for the medical, hospital, or surgical benefits plan or plans. Each part-time, temporary, and seasonal or casual employee enrolled for medical, hospital, or surgical benefits shall pay monthly contributions directly to the board's designated carriers. The monthly contributions may include the carrier's administrative costs. [L 2001, c 88, pt of §1]

**§87A-20 REPEALED.** L 2004, c 216, §45.

**[§87A-21] Eligibility.** (a) The board shall establish eligibility criteria to determine who can qualify as an employee-beneficiary, dependent-beneficiary, or qualified-beneficiary, consistent with the provisions of this chapter.

(b) A retired member of the employees' retirement system; a county pension system; or a police, firefighters, and bandsmen pension system of the State or county, shall be eligible to qualify as an employee-beneficiary:

- (1) Regardless of whether the retired member was actively employed by the State or county at the time of the retired employee's retirement; and
- (2) Without regard to the date of the retired member's retirement.

- (c) A dependent of a retired member shall be eligible to qualify as an employee-beneficiary or dependent-beneficiary:
- (1) Regardless of whether the retired member was actively employed by the State or county at the time of the retired employee's retirement; and
  - (2) Without regard to the date of the retired member's retirement. [L 2001, c 88, pt of §1]

**[§87A-22] Benefits plan information and enrollment.** (a) The board shall make information summarizing approved benefits plans available to each employee-beneficiary. The information shall, to the extent reasonably possible, be distributed to each employee-beneficiary at the same time and in the same manner.

(b) The board shall establish conditions and procedures for benefits plan enrollment. [L 2001, c 88, pt of §1]

**§87A-23 Health benefits plan supplemental to medicare.** The board shall establish a health benefits plan, which takes into account benefits available to an employee-beneficiary and spouse under medicare, subject to the following conditions:

- (1) There shall be no duplication of benefits payable under medicare. The plan under this section, which shall be secondary to medicare, when combined with medicare and any other plan to which the health benefits plan is subordinate under the National Association of Insurance Commissioners' coordination of benefit rules, shall provide benefits that approximate those provided to a similarly situated beneficiary not eligible for medicare;
- (2) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a contribution equal to an amount not less than the medicare part B premium, for each of the following who are enrolled in the medicare part B medical insurance plan: (A) an employee-beneficiary who is a retired employee, (B) an employee-beneficiary's spouse while the employee-beneficiary is living, and (C) an employee-beneficiary's spouse, after the death of the employee-beneficiary, if the spouse qualifies as an employee-beneficiary. For purposes of this section, a "retired employee" means retired members of the employees' retirement system; county pension system; or a police, firefighters, or bandsmen pension system of the State or a county as set forth in chapter 88. If the amount reimbursed by the fund under this section is less than the actual cost of the medicare part B medical insurance plan due to an increase in the medicare part B medical insurance plan rate, the fund shall reimburse each employee-beneficiary and employee-beneficiary's spouse for the cost increase within thirty days of the rate change. Each employee-beneficiary and employee-beneficiary's spouse who becomes entitled to reimbursement from the fund for medicare part B premiums after July 1, 2006, shall designate a financial institution account into which the fund shall be authorized to deposit reimbursements. This method of payment may be waived by the fund if another method is determined to be more appropriate;
- (3) The benefits available under this plan, when combined with benefits available under medicare or any other coverage or plan to which this plan is subordinate under the National Association of Insurance Commissioners' coordination of



- benefit rules, shall approximate the benefits that would be provided to a similarly situated employee-beneficiary not eligible for medicare;
- (4) All employee-beneficiaries or dependent-beneficiaries who are eligible to enroll in the medicare part B medical insurance plan shall enroll in that plan as a condition of receiving contributions and participating in benefits plans under this chapter. This paragraph shall apply to retired employees, their spouses, and the surviving spouses of deceased retirees and employees killed in the performance of duty; and
  - (5) The board shall determine which of the employee-beneficiaries and dependent-beneficiaries, who are not enrolled in the medicare part B medical insurance plan, may participate in the plans offered by the fund. [L 2001, c 88, pt of §1; am L 2003, c 111, §1; am L 2006, c 39, §1]

**§87A-24 Other powers.** In addition to the power to administer the fund, the board may:

- (1) Collect, receive, deposit, and withdraw money on behalf of the fund;
- (2) Invest moneys in the same manner specified in section 88-119(1)(A), (1)(B), (1)(C), (2), (3), (4), (5), (6), and (7);
- (3) Hold, purchase, sell, assign, transfer, or dispose of any securities or other investments of the fund, as well as the proceeds of those investments and any money belonging to the fund;
- (4) Appoint, and at pleasure dismiss, an administrator and other fund staff. The administrator and staff shall be exempt from chapter 76 and shall serve under and at the pleasure of the board;
- (5) Make payments of periodic charges and pay for reasonable expenses incurred in carrying out the purposes of the fund;
- (6) Contract for the performance of financial audits of the fund and claims audits of its insurance carriers;
- (7) Retain auditors, actuaries, investment firms and managers, benefit plan consultants, or other professional advisors to carry out the purposes of this chapter;
- (8) Establish health benefits plan and long-term care benefits plan rates that include administrative and other expenses necessary to effectuate the purposes of the fund; and
- (9) Require any department, agency, or employee of the State or counties to furnish information to the board to carry out the purposes of this chapter. [L 2001, c 88, pt of §1; am L 2004, c 216, §15]

**[§87A-25] Other duties.** The board shall:

- (1) Authorize charges and payments from the fund only upon vouchers countersigned by the chairperson and any other person designated by the board;
- (2) Maintain accurate records and accounts of all financial transactions of the fund that shall be audited annually and summarized in an annual report to the governor and legislature;
- (3) Maintain suitable and adequate records and provide information requested by State and county employers as necessary to carry out the purpose of the fund;
- (4) Procure fiduciary liability insurance and error and omissions coverage for all trustees; and

- (5) Procure a fidelity bond of a reasonable amount for the chairperson and any other person authorized to handle fund moneys. [L 2001, c 88, pt of §1]

**[§87A-26] Rules; policies, standards, and procedures.** (a) The board may adopt rules for the purposes of this chapter. Rules shall be adopted without regard to chapter 91.

Rule-making procedures shall be adopted by the board and shall minimally provide for:

- (1) Consultation with employers and affected employee organizations with regard to proposed rules;
- (2) Adoption of rules at open meetings that permit the attendance of any interested persons;
- (3) Approval of rules by the governor; and
- (4) Filing of rules with the lieutenant governor.

(b) The board may also issue policies, standards, and procedures consistent with its rules.

(c) The board may adopt rules, without regard to chapter 91, governing dispute resolution procedures in the event of impasse in decision-making; provided that the rules shall be adopted with the concurrence of six trustees.

#### **PART IV. TRUST FUND**

**§87A-30 Hawaii employer-union health benefits trust fund; establishment.** There is established outside the state treasury, a trust fund to be known as the "Hawaii Employer-Union Health Benefits Trust Fund". The fund shall consist of contributions, interest, income, dividends, refunds, rate credits, and other returns. It is hereby declared that any and all sums contributed or paid from any source to the fund created by this part, and all assets of the fund including any and all interest and earnings on the same, are and shall be held in trust by the board for the exclusive use and benefit of the employee-beneficiaries and dependent-beneficiaries and shall not be subject to appropriation for any other purpose whatsoever. The fund shall be under the control of the board and placed under the department of budget and finance for administrative purposes. [L 2001, c 88, pt of §1; am L 2006, c 57, §3]

**§87A-31 Trust fund; purpose.** (a) The fund shall be used to provide employee-beneficiaries and dependent-beneficiaries with health and other benefit plans, and to pay administrative and other expenses of the fund. All assets of the fund are and shall be dedicated to providing health and other benefits plans to the employee-beneficiaries and dependent-beneficiaries in accordance with the terms of those plans and to pay administrative and other expenses of the fund, and shall be used for no other purposes except for those set forth in this section.

(b) The fund, including any earnings on investments, and rate credits or reimbursements from any carrier or self-insured plan and any earning or interest derived therefrom, may be used to stabilize health and other benefit plan rates; provided that the approval of the governor and the legislature shall be necessary to fund administrative and other expenses necessary to effectuate these purposes.

(c) The fund may be used to provide group life insurance benefits to employees to the extent that contributions are provided for group life insurance benefits in sections 87A-32 and 87A-37.

(d) The fund may assist the State and the counties to implement and administer cafeteria plans authorized under Title 26 United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78.

(e) At the discretion of the board, some or all of the fund may be used as a reserve against or to pay the fund's future costs of providing health and other benefits plans established under sections 87A-23 and 87A-37 and any other benefits plans the board establishes for retired employees and their beneficiaries. The board may create separate funds within the fund for this purpose. Each separate fund shall be subject to all of the provisions of this chapter. [L 2001, c 88, pt of §1; am L 2006, c 57, §4]

### **Note**

Part II of chapter 78 referred to in text is repealed.

**[§87A-31.5] Employer contributions irrevocable.** Notwithstanding any law to the contrary, all of the monthly contributions that the State and counties make to the fund under sections 87A-32, 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37, and all other contributions that the State and counties may make to the fund, shall be irrevocable; provided that this shall not preclude the fund from returning contributions or payments made by the State or any county under a mistake of fact within one year after the payment of the contributions or payments. [L 2006, c 57, §2]

**[§87A-32] State and county contributions; active employees.** (a) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the applicable public sector collective bargaining agreements, whichever is appropriate, for each of their respective employee-beneficiaries and employee-beneficiaries with dependent-beneficiaries, which shall be used toward the payment of costs of a health benefits plan; provided that:

- (1) The monthly contribution shall be a specified dollar amount;
- (2) The monthly contribution shall not exceed the actual cost of a health benefits plan;
- (3) If both husband and wife are employee-beneficiaries, the total contribution by the State or the county shall not exceed the monthly contribution for a family plan; and
- (4) If the State or any of the counties establish cafeteria plans in accordance with Title 26, United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78, the monthly contribution for those employee-beneficiaries who participate in a cafeteria plan shall be made through the cafeteria plan, and the payments made by the State or counties shall include their respective contributions to the fund and their employee-beneficiary's share of the cost of the employee-beneficiary's health benefits plan.

(b) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to the amount established under chapter 89C or specified in the

applicable public sector collective bargaining agreement, whichever is applicable, for each of their respective employees, to be used toward the payment of group life insurance benefits for each employee. [L 2001, c 88, pt of §1]

### Note

Part II of chapter 78 referred to in text is repealed.

**§87A-33 State and county contributions; retired employees.** (a) Notwithstanding any law to the contrary, this section shall apply to state and county contributions to the fund for:

- (1) The dependent-beneficiary of an employee who is killed in the performance of duty;
- (2) A dependent-beneficiary, upon the death of the employee-beneficiary, except as provided in section 87A-36;
- (3) An employee-beneficiary who retired after June 30, 1984, due to a disability falling within sections 88-79 and 88-285;
- (4) An employee-beneficiary who retired before July 1, 1984;
- (5) An employee-beneficiary who:
  - (A) Was hired before July 1, 1996;
  - (B) Retired after June 30, 1984; and
  - (C) Who has ten years or more of credited service, excluding sick leave;
- (6) An employee-beneficiary who:
  - (A) Was hired after June 30, 1996; and
  - (B) Retired with twenty-five or more years of credited service, excluding sick leave, except as provided in section 87A-36; and
- (7) Employees who retired prior to 1961 and their dependent-beneficiaries.

(b) Effective July 1, 2003, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:

- (1) \$218 for each employee-beneficiary enrolled in supplemental medicare self plans;
- (2) \$671 for each employee-beneficiary enrolled in supplemental medicare family plans;
- (3) \$342 for each employee-beneficiary enrolled in non-medicare self plans; and
- (4) \$928 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefits plan or plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

(c) Effective July 1, 2004, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:

- (1) \$254 for each employee-beneficiary enrolled in supplemental medicare self plans;

- (2) \$787 for each employee-beneficiary enrolled in supplemental medicare family plans;
- (3) \$412 for each employee-beneficiary enrolled in non-medicare self plans; and
- (4) \$1,089 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefit plan or plans and shall not be required to cover increased benefits above those initially contracted for by the fund for plan year 2004-2005. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

(d) The base composite monthly contribution shall be adjusted annually, beginning July 1, 2005. The adjusted base composite monthly contribution for each new plan year (July 1 until June 30) shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years, which percentage shall be calculated by dividing the medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect at the beginning of the previous plan year.

For the plan year beginning July 1, 2005, the adjusted base monthly contribution shall be computed using the actual contracted premium rate as of July 1, 2004, for medicare and non-medicare, self and family health benefit plans with the highest actual contracted premium rate as of July 1, 2004.

As used in this subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1 or on the business day closest to November 1 of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress. [L 2001, c 88, pt of §1; am L 2003, c 111, §2]

**[§87A-33.5] State and county contribution; reimbursement for retired employees.**

Effective July 1, 2007, an employee-beneficiary who retires and relocates outside of the State shall be reimbursed for the premiums paid by the employee-beneficiary for a personal health insurance policy; provided that the board shall determine which employee-beneficiaries and what types of personal health insurance policies shall be eligible for reimbursement and may set other conditions that shall be met for the employee-beneficiary to receive the reimbursements provided under this section.

The reimbursement shall be the lesser of:

- (1) The actual cost of the personal health insurance policy; or
- (2) The amount of the state or county contribution for the most comparable health benefits plan.

Reimbursements shall be paid by the fund on a quarterly basis upon the presentation of documentation that the premiums for the personal health insurance policy have been paid by the employee-beneficiary. This section shall apply to all employee-beneficiaries who retire and relocate outside of the State, regardless of their date of retirement. [L 2006, c 167, §1]

**[§87A-34] State and county contributions; retired employees with fewer than ten years of service.** (a) This section shall apply to state and county contributions to the fund for employees specified in paragraph (1)(E) of the definition of "employee" in section 87A-1 who:

- (1) Were hired on or before June 30, 1996; and
- (2) Retired after June 30, 1984, with fewer than ten years of credited service, excluding sick leave.

(b) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a monthly contribution equal to one-half of the base monthly contribution set forth under section 87A-33(b) for retired employees enrolled in medicare or non-medicare health benefits plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for supplemental medicare family or non-medicare family plan, as appropriate. [L 2001, c 88, pt of §1]

**§87A-35 State and county contributions; employees hired after June 30, 1996, but before July 1, 2001, and retired with fewer than twenty-five years of service.** (a) This section shall apply to state and county contributions to the fund for employees who were hired after June 30, 1996, but before July 1, 2001, and who retire with fewer than twenty-five years of credited service, excluding sick leave; provided that this section shall not apply to the following employees, for whom state and county contributions shall be made as provided by section 87A-33:

- (1) An employee hired prior to July 1, 1996, who transfers employment after June 30, 1996, and who cumulatively accrues at least ten years of credited service; and
- (2) An employee hired prior to July 1, 1996, who has at least ten years of credited service prior to a break in service.

For the purposes of this section:

"Break in service" means to leave state or county employment for more than ninety calendar days before returning to state or county employment.

"Transfer" means to leave state or county employment and return to state or county employment within ninety calendar days.

(b) For purposes of this section, if an employee leaves state or county employment and returns to state or county employment after June 30, 1996, upon retirement, the employee's years of service shall be computed in the same manner as set forth in chapter 88.

(c) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund:

- (1) For retired employees enrolled in medicare or non-medicare health benefit plans with ten or more years but fewer than fifteen years of service, a monthly contribution equal to one-half of the base monthly contribution set forth under section 87A-33(b); and
- (2) For retired employees enrolled in medicare or non-medicare health benefit plans with at least fifteen but fewer than twenty-five years of service, a monthly contribution of seventy-five per cent of the base monthly contribution set forth under section 87A-33(b).

If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate. [L 2001, c 88, pt of §1; am L 2004, c 184, §1]

### Note

L 2004, c 184, §3 provides:

"SECTION 3. The board of trustees of the employer-union health benefits trust fund shall establish a process by which public employees affected by this Act shall be notified of the retirement health benefits options provided under this Act."

**§87A-36 State and county contributions; employees hired after June 30, 2001, and retired.** (a) This section shall apply to state and county contributions to the fund for employees hired after June 30, 2001, and who retired, except that this section shall not apply to the following employees, for whom state and county contributions shall be made as provided by section 87A-35:

- (1) An employee hired after June 30, 1996, and prior to July 1, 2001, who transfers employment after June 30, 2001, and who cumulatively accrues at least ten years of credited service; and
- (2) An employee hired after June 30, 1996, and prior to July 1, 2001, who has at least ten years of credited service prior to a break in service.

For purposes of this section:

"Break in service" means to leave state or county employment for more than ninety calendar days before returning to state or county employment.

"Transfer" means to leave state or county employment and return to state or county employment within ninety calendar days.

(b) For purposes of this section, if an employee leaves state or county employment and returns to state or county employment after July 1, 2001, upon retirement, the employee's years of service shall be computed in the same manner as set forth in chapter 88.

(c) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund:

- (1) For retired employees based on the self plan with ten or more years but fewer than fifteen years of service, a monthly contribution equal to one-half of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b);
- (2) For retired employees based on the self plan with at least fifteen but fewer than twenty-five years of service, a monthly contribution equal to seventy-five per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b);
- (3) For retired employees based on the self plan with twenty-five or more years of service, a monthly contribution equal to one-hundred per cent of the base medicare or non-medicare monthly contribution set forth under section 87A-33(b); and

- (4) One-half of the monthly contributions for the employee-beneficiary or employee-beneficiary with dependent-beneficiaries upon the death of the employee, as defined in paragraph (1)(E) of the definition of "employee" in section 87A-1.

If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for two supplemental medicare self or non-medicare self plans, as appropriate. [L 2001, c 88, pt of §1; am L 2004, c 184, §2]

### **Note**

L 2004, c 184, §3 provides:

"SECTION 3. The board of trustees of the employer-union health benefits trust fund shall establish a process by which public employees affected by this Act shall be notified of the retirement health benefits options provided under this Act."

### **[§87A-37] Group life insurance benefits plans for retired employees; contributions.**

(a) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a base monthly contribution as set forth in subsection (b) for each retired employee enrolled in the fund's group life insurance benefits plan under section 87A-34, 87A-35, and 87A-36.

(b) Effective July 1, 2003, there is established a base monthly contribution of \$4.16 for each retired employee enrolled in a group life insurance plan; provided that the monthly contribution shall not exceed the actual cost of the group life insurance benefits plan. The base composite monthly contribution shall be adjusted annually beginning July 1, 2004. The adjusted base composite monthly contribution for each new plan year shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years. The percentage shall be calculated by dividing the medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect through the end of the previous plan year.

As used in this subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1 or on the business day closest to November 1 of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress. [L 2001, c 88, pt of §1]

### **[§87A-38] State and county contributions not considered wages or salary.**

Contributions made by the State or the counties under this part shall not be considered wages or salary of an employee-beneficiary. No employee-beneficiary shall have any vested right in or be entitled to receive any part of any contribution made to the fund. [L 2001, c 88, pt of §1]

**[§87A-39] Reimbursement for state contributions.** (a) All state agencies having control of funds other than the general fund shall reimburse the State for contributions made by the State pursuant to sections 87A-32, 87A-33, 87A-34 87A-35, 87A-36, and



87A-37 on account of agency employees whose compensation is paid in whole or part from funds other than the general fund.

(b) All state and county agencies receiving federal funds, which may be expended for the purpose of replacing the contributions payable by the State to the fund, shall set aside a portion of the federal funds sufficient to reimburse the State for contributions made by the State pursuant to sections 87A-32, 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37, on account of the employees in the agencies whose compensation is paid in whole or part from federal funds. [L 2001, c 88, pt of §1]

**[§87A-40] Employee-beneficiary contributions; health benefit plans.** (a) Each employee-beneficiary shall make a monthly contribution to the fund amounting to the difference between the monthly charge of the health benefits plan selected by the employee-beneficiary and the contribution made by the State or county for the employee-beneficiary to the fund. Nothing in this section shall prohibit any employee-beneficiary from participating in a cafeteria plan authorized under Title 26 United States Code section 125, Internal Revenue Code of 1986, as amended, and part II of chapter 78.

(b) During the period the health benefits plan selected by an employee-beneficiary is in effect, the employee-beneficiary, if allowed by law, shall authorize the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller, employees' retirement system, or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If an employee-beneficiary's contribution to the fund is not withheld and transmitted to the fund, the employee-beneficiary shall pay the monthly contribution:

- (1) In the case of an employee-beneficiary who normally receives the employee-beneficiary's compensation from the comptroller or employees' retirement system, directly to the fund by the first day of each month; or
- (2) In the case of all other employee-beneficiaries, to the respective finance officer from whom the employee-beneficiary normally receives compensation for transmittal to the fund by the first day of each month.

(c) Notwithstanding subsection (a), an employee-beneficiary's monthly contribution to the fund shall include the amount that would have been the employee-beneficiary's contribution if the employee-beneficiary had not elected to participate in the cafeteria plan. [L 2001, c 88, pt of §1]

### **Note**

Part II of chapter 78 referred to in text is repealed.

**[§87A-41] Employee-beneficiary or qualified-beneficiary contributions; long-term care benefits plan.** (a) During the period the long-term care benefits plan is in effect, the employee-beneficiary, if allowed by law, shall authorize the employee-beneficiary's contribution to be withheld and transmitted to the fund monthly by the comptroller, employees' retirement system, or finance officer who disburses the employee-beneficiary's compensation, pension, or retirement pay. If an employee-beneficiary's monthly contribution to the fund is not withheld and transmitted to the fund, the

employee-beneficiary shall pay the monthly contribution directly to the board's designated carrier or third-party administrator as specified by the board.

(b) Qualified-beneficiaries shall pay monthly contributions directly to the board's designated carrier or third-party administrator as specified by the board. [L 2001, c 88, pt of §1]

**[CHAPTER 87D]**  
**VOLUNTARY EMPLOYEES' BENEFICIARY ASSOCIATION TRUSTS**

**Section**

- 87D-1 Definitions
- 87D-2 Establishment of the trust
- 87D-3 Summary plan description
- 87D-4 Annual report
- 87D-5 Filing and furnishing of information requirements
- 87D-6 Fiduciary duties; prohibited transactions
- 87D-7 Liability for breach of fiduciary duty
- 87D-8 State and county contributions to the trust; active employees
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- 87D-10 Termination of the trust
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- 87D-12 Insurance; immunity of State and counties

**Note**

Chapter repealed July 1, 2008. L 2005, c 245, §8.

**[§87D-1] Definitions.** As used in this chapter:

"Beneficiary" means a person designated by a participant, or by the terms of an employee welfare benefit plan, who is or may become entitled to a benefit thereunder.

"Collective bargaining agreement" means the formal written agreement over wages, hours, amounts of contributions by the State and counties to a trust established under this chapter, and other terms and conditions of employment, entered into between an employer and the exclusive representatives of the employees of the employer.

"Contribution" means money payments made to the trust by the State, counties, or a state or county employee.

"Employee" or "public employee" means any person employed by a public employer except elected and appointed officials and other employees excluded from coverage in section 89-6(g).

"Employee organization" means the employee organization as defined in section 89-2.

"Employee welfare benefit plan" or "plan" shall mean any plan, fund, or program which is established by the trust for the purpose of providing participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, or death.

"Employer" or "public employer" means "employer" or "public employer" as defined in section 89-2.

"Exclusive representative" means "exclusive representative" as defined in section 89-2.

"Fiduciary" means any person, with respect to a plan, to the extent that such person:

- (1) Exercises any discretionary authority or discretionary control respecting management of such plan or exercises authority or control respecting management or disposition of its assets;
- (2) Renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has authority or responsibility to do so; or
- (3) Has any discretionary authority or discretionary responsibility in the administration of such plan.

Without limiting the foregoing, "fiduciary" shall include each trustee of the trust.

"Participant" means any employee or retiree who is a member of the trust and is eligible to receive benefits under an employee welfare benefit plan provided by or through the trust.

"Party in interest" means:

- (1) Any fiduciary, counsel, or employee of the trust;
- (2) A person providing services to the trust or its plans;
- (3) An employer, any of whose employees are covered by such plans; and
- (4) An employee organization, any of whose members are covered by the trust's plans.

"Retiree" means an individual who has retired from the State or its counties.

"Trust" means a voluntary employees' beneficiary association trust established under this chapter. [L 2005, c 245, pt of §2]

**[§87D-2] Establishment of the trust.** An employee organization shall be exempt from chapter 87A and meet the following requirements in order to establish a voluntary employees' beneficiary association trust under this chapter:

- (1) The employee organization shall establish a tax-exempt trust pursuant to Title 26 United States Code section 501(c)(9), as amended, and related regulations, known as a voluntary employees' beneficiary association trust;
- (2) The trust may offer health benefits in accordance with Title 26 United States Code section 501(c)(9), as amended, and related regulations;
- (3) The trust shall meet all the standards and requirements applicable to employee welfare benefit plans under Title 29 United States Code sections 1001-1191, as amended, and related regulations. The assets of any plan provided by or through the trust shall not inure to the benefit of any employee organization and shall be held for the exclusive purposes of providing benefits to participants and beneficiaries and defraying reasonable expenses of administration; provided that this shall not preclude the trust from returning contributions or payments made by an employer under a mistake of fact within one year after the payment of the contributions or payments;
- (4) Each plan offered by the trust shall be established and maintained pursuant to a written instrument that:
  - (A) Provides a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this chapter;

- (B) Describes any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan;
- (C) Provides a procedure for amending the plan;
- (D) Specifies the basis on which payments are made to and from the plan; and
- (E) Provides a procedure for providing adequate notice in writing to any participant or beneficiary whose claim for benefits has been denied, setting forth the specific reasons for such denial, and affording a reasonable opportunity for any participant whose claim has been denied for a full and fair review. The written instrument shall meet any other standards and requirements of Title 29 United States Code [sections] 1001-1191, as amended, and related regulations;
- (5) The trust shall provide a summary plan description, material modifications or amendments to the summary plan description, and updates to the summary plan description that meet the standards and requirements of this chapter;
- (6) All of the assets of the trust's plans shall be held in trust by the governing board of the trust, at least one member of which shall be a retiree and a member of the employee organization sponsoring the trust;
- (7) The governing board of the trust shall hold regularly scheduled meetings open to all participants and beneficiaries and shall provide such persons with advance notice of all meetings; and
- (8) The employee organization shall have an applicable collective bargaining agreement with the employer; provided that the agreement shall specify that the employee organization agrees to comply with all requirements of this chapter without regard to whether or not the trust is deemed a governmental plan under federal law. [L 2005, c 245, pt of §2]

### **Revision Note**

Subsection designation deleted pursuant to §23G-15(1).

**[§87D-3] Summary plan description.** (a) Each summary plan description provided under this chapter shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan shall be written in a manner calculated to be understood by the average participant.

- (b) The summary plan description shall contain the following information:
  - (1) The name and type of administration of the plan;
  - (2) In the case of a group health plan, whether a health insurance issuer is responsible for the financing or administration (including payment of claims) of the plan and if so, the name and address of such issuer;
  - (3) The name and address of the person designated as agent for the service of legal process, if such person is not the administrator;
  - (4) The name and address of the administrator;
  - (5) The names, titles, and addresses of any trustee or trustees;

- (6) A description of the relevant provisions of any applicable collective bargaining agreement;
- (7) The plan's requirements respecting eligibility for participation and benefits;
- (8) Circumstances that may result in disqualification, ineligibility, or denial or loss of benefits;
- (9) The source of financing of the plan and the identity of any organization through which benefits are provided;
- (10) The date of the end of the plan year and whether records of the plan are kept on a calendar, policy, or fiscal year basis; and
- (11) The procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan procedures.

The summary plan description shall contain any other information required under Title 29 United States Code sections 1001-1191, as amended, and related regulations. [L 2005, c 245, pt of §2]

**[§87D-4] Annual report.** (a) The trust shall publish an annual report with respect to every employee welfare benefit plan to which this chapter applies. The report shall be filed with the department of accounting and general services and the respective departments of the counties as their interests may appear.

(b) The annual report shall contain the following:

- (1) The number of employees, retirees, and other persons covered by the plan;
- (2) The name and address of each fiduciary;
- (3) Except in the case of a person whose compensation is minimal and who performs solely ministerial duties, the name of each person (including but not limited to any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding plan year for services rendered to the plan or its participants, the amount of such compensation, the nature of the person's services to the plan or its participants, the person's relationship to the employee organization, and any other office, position, or employment that the person holds with a party in interest;
- (4) An explanation of the reason for any change in appointment of any trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager, or custodian; and
- (5) A financial statement that meets the requirements of this chapter.

The annual report shall contain any other information required by Title 29 United States Code sections 1001-1191, as amended, and related regulations.

(c) The financial statement of the annual report shall contain the following information with respect to an employee welfare benefit plan:

- (1) A statement of assets and liabilities;
- (2) A statement of changes in fund balance;
- (3) A statement of changes in financial position;
- (4) A statement of receipts and disbursements during the preceding twelve-month period;

- (5) A schedule of all assets held for investment purposes;
- (6) A schedule of each transaction involving a person known to be a party in interest;
- (7) A schedule of all loans or fixed income obligations which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectible;
- (8) A list of all leases that were in default or were classified during the year as uncollectible;
- (9) If some or all of the assets of the plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate account or a separate trust, such other information as is required by the administrator in order to comply with this chapter; and
- (10) A schedule of each reportable transaction.

The financial statement shall contain any other information required under Title 29 United States Code sections 1001-1191, as amended, and [related] regulations. [L 2005, c 245, pt of §2]

**[§87D-5] Filing and furnishing of information requirements.** (a) Once established, the trust shall comply with all the form and report filing requirements imposed on the trust by the Internal Revenue Service and Title 29 United States Code sections 1001-1191, as amended, and [related] regulations.

(b) Within two hundred ten days of the closing of each plan year, the trust shall provide an annual report for each employee welfare benefit plan covered by this chapter to the department of accounting and general services and the respective departments of the counties as their interests may appear. The annual reports shall be government records open to public inspection.

(c) The trust shall provide summary plan descriptions to each participant and beneficiary of each employee welfare benefit plan covered by this chapter within ninety days of a participant becoming enrolled in a plan or within ninety days of a beneficiary first receiving benefits under a plan. No less than every fifth year after a plan is established, the trust shall provide updated summary plan descriptions to each participant and beneficiary. If a material modification or amendment is made to a plan, the trust shall provide a summary description of such modification or amendment to each participant or beneficiary within two hundred ten days after the plan year in which the modification or amendment is made.

(d) Upon request of any participant or beneficiary, the trust shall provide such person with the latest updated summary plan description, the latest annual report, the applicable collective bargaining agreement, the trust agreement, and any other instruments under which the trust and plan were established or are operated.

(e) The trust shall file a copy of all documents referenced in subsections (a) and (c) with the department of human resources development and the respective departments of the counties as their interests may appear. [L 2005, c 245, pt of §2]

**§87D-6 Fiduciary duties; prohibited transactions.** (a) A fiduciary of the trust shall with respect to a plan comply with all fiduciary duties imposed on fiduciaries under Title 29 United States Code sections 1001-1191, as amended, and [related] regulations.

(b) All fiduciaries of the trust shall discharge their duties with respect to a plan solely in the interest of the participants and beneficiaries and:

- (1) For the exclusive purpose of:
  - (A) Providing benefits to participants and their beneficiaries; and
  - (B) Defraying reasonable expenses of administering the plan;
- (2) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with those matters would use in the conduct of an enterprise of a similar character and with like aims;
- (3) By diversifying the investments of the plan so as to minimize the risk of large losses, unless, under the circumstances, it is clearly prudent not to do so; and
- (4) In accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this chapter.

(c) In addition to any liability that a fiduciary may have under this chapter, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

- (1) If the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of the other fiduciary, knowing that act or omission is a breach;
- (2) If, by the fiduciary's failure to comply with subsection (a) or (b), the fiduciary has enabled such other fiduciary to commit breach; or
- (3) If the fiduciary has knowledge of the breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

If the assets of the plan are held by two or more trustees, each shall use reasonable care to prevent a co-trustee from committing a breach, and each shall be responsible for jointly managing and controlling the assets of the plan.

(d) A fiduciary shall not cause a plan to engage in a transaction, if the fiduciary knows or should know that the transaction constitutes a direct or indirect:

- (1) Sale or exchange, or leasing, of any property between the plan and a party in interest;
- (2) Lending of money or other extension of credit between the plan and a party in interest;
- (3) Furnishing of goods, services, or facilities between the plan and a party in interest; or
- (4) Transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan.

(e) A fiduciary shall not:

- (1) Deal with the assets of the plan in the fiduciary's own interest or for the fiduciary's own account;



- (2) In the fiduciary's individual capacity or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries; or
- (3) Receive any consideration for the fiduciary's own personal account from any party dealing with the plan in connection with a transaction involving the assets of the plan. [L 2005, c 245, pt of §2; am L 2006, c 38, §3]

**[§87D-7] Liability for breach of fiduciary duty.** (a) Any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by this chapter shall be personally liable to make good to the plan any losses to the plan resulting from each breach, and to restore to the plan any profits of the fiduciary that have been made through the use of assets of the plan by the fiduciary, and shall be subject to any other equitable and remedial relief as the court may deem appropriate, including removal of the fiduciary.

(b) Any provision in any agreement or instrument that purports to relieve a fiduciary of responsibility or liability for any responsibility, obligation, or duty under this chapter shall be void as against public policy. However, nothing in this section shall preclude:

- (1) A plan from purchasing insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of the act or omission of a fiduciary in the case of a breach of a fiduciary obligation by the fiduciary, if the insurance permits recourse by the insurer against the fiduciary in the case of a breach of fiduciary obligation by the fiduciary;
- (2) A fiduciary from purchasing insurance to cover liability under this chapter from and for the fiduciary's own account; or
- (3) An employee organization from purchasing insurance to cover potential liability of one or more persons who serve in a fiduciary capacity with regard to an employee welfare benefit plan. [L 2005, c 245, pt of §2]

**[§87D-8] State and county contributions to the trust; active employees.** Upon the establishment of a voluntary employees' beneficiary association trust, the State, through the department of budget and finance, [and] the counties through their respective departments of finance, shall pay to the trust a monthly contribution equal to the amount specified in the applicable public sector collective bargaining agreement from July 1, 2005, and thereafter. [L 2005, c 245, pt of §2]

**[§87D-9] State and county contributions to the trust; retired employees.** (a) Any individual who becomes a retiree on or after the establishment of a voluntary employees' beneficiary association trust, and who, immediately prior to retirement, was a member of the bargaining unit of the sponsoring employee organization, shall be enrolled in that voluntary employees' beneficiary association trust. Upon the establishment of a voluntary employees' beneficiary association trust, the State, through the department of budget and finance, and the counties through their respective departments of finance, shall pay to the trust for each retiree who retires on or after July 1, 2005, a monthly contribution pursuant to the applicable collective bargaining agreement that shall not

exceed the base monthly contributions or the specific contribution limits set forth in chapter 87A.

(b) Any retiree who, immediately prior to retirement, was a member of an employee organization prior to the establishment of a voluntary employees' beneficiary association trust by the employee organization, and who was previously covered by a collective bargaining agreement, shall be given a one-time option to transfer participation from the Hawaii employer-union health benefits trust fund established under chapter 87A to the organization's voluntary employees' beneficiary association trust once the latter is established. Upon the establishment of the voluntary employees' beneficiary association trust, the State, through the department of budget and finance[,] and the counties, through their respective departments of finance, shall pay to the trust for each retiree who opts to transfer into a voluntary employees' beneficiary association trust, a monthly contribution equal to the contribution paid on behalf of a similarly situated retiree under the Hawaii employer-union health benefits trust fund.

(c) Medicare part B reimbursements established pursuant to section 87A-23(2) shall be directly disbursed by the State, through the department of budget and finance, and the counties, through their respective departments of finance, to those retirees and their beneficiaries who qualify and are covered by a voluntary employees' beneficiary association trust to the same extent retirees and their beneficiaries under the Hawaii employer-union health benefits trust fund receive those reimbursements.

(d) For the purposes of this chapter, a collective bargaining agreement shall include provisions specifying contributions to a voluntary employees' beneficiary association trust. [L 2005, c 245, pt of §2]

**[§87D-10] Termination of the trust.** If an employee organization or a collective bargaining agreement that establishes a voluntary employees' beneficiary association trust terminates the voluntary employees' beneficiary association trust, or ceases to provide health benefits, the participants in the trust shall be allowed to return to the Hawaii employer-union health benefits trust fund upon the date that health benefits cease to be provided. All participants electing to return to the Hawaii employer-union health benefits trust fund shall be given the same rights and benefits as if the participant had first participated in the Hawaii employer-union health benefits trust fund from the inception of that trust fund without loss of benefits or accrued time. [L 2005, c 245, pt of §2]

**[§87D-11] Violation of the chapter; enforcement.** (a) A civil action may be brought by a participant, beneficiary, or fiduciary:

- (1) For relief, if a trust fails to provide any information required under this chapter, or if a trust fails to comply with any request for information that the trust is required to furnish to the participant or beneficiary;
- (2) To recover benefits due the participant or beneficiary under the terms of the plan, or to enforce the participant's or beneficiary's rights under the terms of the plan, or to clarify the participant's or beneficiary's rights to future benefits under the terms of the plan;
- (3) For appropriate relief against any breach of fiduciary duty under section 87D-7; or
- (4) To enjoin any act or practice that violates any provision of this chapter or the terms of the plan, or to obtain any other appropriate equitable relief, or to

redress such violations, or to enforce any provisions of this chapter or the terms of the plan.

(b) A civil action may be brought by the attorney general:

- (1) For relief, if a trust fails to provide any information required by this chapter, or if a trust fails to comply with any request for information that the trust is required to furnish any state or county department;
- (2) To enjoin any act or practice that violates any provision of this chapter;
- (3) To redress the violations;
- (4) To enforce any provision of this chapter; or
- (5) To suspend contributions from the State and counties made pursuant to a collective bargaining agreement required under section [87D-2(8)] made to any trust established under this chapter.

(c) The attorney general shall have the power, in order to determine whether any person has violated or is about to violate any provision of this chapter:

- (1) To conduct an investigation and in connection therewith to require submission of reports, books, and records, and the filing of data in support of any information required to be filed under this chapter; and
- (2) To enter any place, inspect any books and records, and question any persons as the attorney general may deem necessary to enable the attorney general to determine the facts relative to an investigation.

For purposes of any investigation provided for in this chapter, the attorney general may utilize the investigation procedures set forth in section 480-18 and the remedies and penalties of that section are hereby made applicable.

(d) The rights and remedies provided in this section are in addition to any rights or remedies that the participants, beneficiaries, fiduciaries, attorney general, or other state or federal agencies may have over the trust, the plans provided by or through the trust, and fiduciaries of the plans. [L 2005, c 245, pt of §2]

**[§87D-12] Insurance; immunity of State and counties.** (a) The employee organization or the trust's governing board shall procure:

- (1) Fiduciary liability insurance and errors and omissions coverage for members of the governing board; and
- (2) A fidelity bond of a reasonable amount for the chairperson of the governing board and any other person authorized to handle trust moneys.

(b) Notwithstanding any law to the contrary, the State and the counties, and their officers, agents, and employees, shall not be liable for any benefits provided by a trust or which it fails to provide, any losses suffered by a trust, and any losses, damages, or penalties arising out of the operations of a trust or the acts or omissions of a trust's governing board or any fiduciary of a trust. [L 2005, c 245, pt of §2]